

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 02-2482

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United States of America,

Appellee,

v.

Manuel Saenz-Salas,

Appellant.

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Appeal from the United States  
District Court for the  
Southern District of Iowa.

[UNPUBLISHED]

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Submitted: December 20, 2002

Filed: December 30, 2002

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Before MORRIS SHEPPARD ARNOLD, MURPHY, and MELLOY, Circuit Judges.

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PER CURIAM.

Manuel Saenz-Salas pleaded guilty to intentionally reentering the United States without permission following his conviction for an aggravated felony and subsequent deportation, in violation of 8 U.S.C. § 1326(a) and (b)(2). At sentencing, the district court<sup>1</sup> denied Saenz-Salas's request for a downward departure based on the overrepresentation of his criminal history, and then sentenced him to 41 months imprisonment and 3 years supervised release.

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<sup>1</sup>The Honorable Ronald E. Longstaff, Chief Judge, United States District Court for the Southern District of Iowa.

On appeal, Saenz-Salas's counsel has filed a brief and moved to withdraw under Anders v. California, 386 U.S. 738 (1967), arguing the district court abused its discretion in denying the downward departure. We conclude that the ruling is unreviewable, because the district court's refusal to depart was a discretionary decision. See United States v. Lopez-Arce, 267 F.3d 775, 783-84 (8th Cir. 2001). Upon reviewing the record independently under Penson v. Ohio, 488 U.S. 75 (1988), we have found no nonfrivolous issues. Accordingly, we affirm. We also grant counsel's motion to withdraw.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.